

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting a high bid for a competitive oil and gas lease. NM 55127.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:  
Discretion to Lease

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the estimated minimum acceptable value for a parcel and sufficient factual data indicating the derivation of that value cannot support rejection of the high bid for the parcel.

APPEARANCES: R. T. Nakaoka, pro se; Robert J. Uram, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE BURSKI

R. T. Nakaoka has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated January 26, 1983, rejecting his high bid for parcel 15, serialized as NM 55127, in the competitive oil and gas lease sale held on December 14, 1982. Appellant's bid was the high bid of the four received on parcel 15, and totaled \$1,586 for the 39.65-acre parcel, or \$40 per acre. In recommending rejection of the high bid, the Deputy Minerals Manager, Resource Evaluation, Albuquerque, New Mexico, BLM, stated:

Although there are two shallow dry holes on the parcel itself, and no production in the vicinity of the parcel[,] a parcel in section 8, approximately one mile to the southeast, received a high bid of \$1,135/acre in a state sale held on May 18, 1982.

In addition, a parcel in section 16, approximately 1-1/2 miles to the south, received a high bid of \$304.69/acre in a July, 1982 state lease sale. A Bone Springs, gas well, 1/4 mile to the southwest in section 12-A, is shut-in, but tested at 2,955 Mcf/day.

Our presale evaluation was based upon these factors and is higher than the high bid received.

Pursuant to this memorandum, the State Office rejected appellant's high bid, from which action this appeal was taken.

In his statement of reasons in support of his appeal, appellant suggests that the Government's presale evaluation was unduly optimistic. Thus, he notes that the Bone Springs well made excess water in completion testing, rat-holing of a 250-foot test well was also unsuccessful, and, in any event, parcel 15 is downdip of this well. Appellant argues that the two shallow dry holes in the lease indicate that it will probably require a deep completion which, given the present economic outlook, would not be financially remunerative. Finally, appellant suggests that the Government's own data, which indicates that sale values in the area were decreasing from \$1,135 per acre in May 1982, to \$304 per acre in July 1982, shows that lease values have generally been under rapid decline.

In responding to appellant's assertions, counsel for BLM attached an analysis of appellant's statement of reasons by the Deputy Minerals Manager. The Deputy Minerals Manager addressed specific points raised by appellant. Thus, he noted that appellant stated that the Bone Springs gas well made excess water. Appellant, the Deputy Minerals Manager suggested, had misread the relevant data. Thus, he noted that the figures utilized by appellant which showed "F/600 MCFGPD + 5 BO + 148 BW/17 hrs, 30 mins" related not to potential production but to the recovery of recirculated water used in completing the well. According to the well's completion report, which was attached, calculated production was 2,955 MCFGPD with 12 BOPD and 0 BWPD. The Deputy Minerals Manager also argued that there was no evidence to suggest that parcel 15 was, in fact, downdip.

Insofar as the two dry holes which had been drilled on parcel 15 were concerned, the Deputy Minerals Manager noted that they had been drilled only to a depth of approximately 2,800 feet, whereas the Bone Springs gas well was perforated at 6,480 to 6,678 feet. With reference to appellant's final contention that falling petroleum prices were depressing all lease values, the Deputy Minerals Manager noted that such factors "were considered in the evaluation for this tract. Our pre-sale evaluation is based on these factors and is higher than the high bid received."

Counsel for BLM suggests that the evidence submitted by BLM more than adequately establishes the correctness of its action in rejecting appellant's bid and that appellant has not shown any error therein. While we admit that the State Office has generally rebutted most of appellant's arguments, there remains in the record before this Board an evidentiary hiatus which prevents us from affirming its decision, namely its failure to supply this Board or appellant with the Government's presale evaluation.

The importance of this figure has been emphasized in numerous Board decisions. See, e.g., Viking Resources Corp., 77 IBLA 57 (1983); Larry White, 72 IBLA 242 (1983). There are a number of considerations which make disclosure of these estimates essential to the ability of the Board to discharge its appellate review functions. First, the absence of such estimates puts the Board in the position of reviewing the correctness of a BLM decision to reject a high bid on the ground that it is inadequate when it is impossible for this Board to determine if this is factually correct.

Our concern, here, is not purely hypothetical. Thus, in Stephen M. Bess, 71 IBLA 122 (1983), we noted that Minerals Management Service had mistakenly utilized a monthly production figure as a daily production figure in computing the values of adjacent wells, thereby distorting such production by a factor of 30. While we do not doubt that such purely mathematical mistakes are rare, the failure of BLM to submit the presale evaluation effectively removes the ability of the Board to discover such an error should it, in fact, exist.

A more general concern relates to the fact that recent adjudications clearly indicate that BLM will accept a high bid which is below BLM's presale estimates either where such a bid is relatively close to the presale estimate of value or where other factors indicate that the bid might reflect fair market value. Thus, in Amoco Production Co., 71 IBLA 241 (1981), we noted that while some high bids below the presale evaluation were rejected as showing "only speculative interest," others were accepted because they were "substantial." In the absence of a record in that case which could establish why one bid was deemed "substantial" while another was "only speculative," we were forced to set aside the decision and remand the case for readjudication.

The instant record discloses precisely the type of problem delineated in Amoco Production Co., *supra*. In his memorandum of January 5, 1983, which recommended rejection of appellant's high bid, the Deputy Minerals Manager also recommended acceptance of 11 high bids which were below the presale estimates. For two parcels, 32 and 52, the only justification given was that they were within 82 percent and 99 percent respectively of the presale valuation.

Equally significant is the fact that for parcel 51 it was recommended that the high bid of \$29.50 per acre be accepted even though a high bid of \$38.38 per acre for the same parcel had been rejected in the February 1982 sale. In justifying this action, the Deputy Minerals Manager stated:

In the February sale, [this parcel] received a high bid of \$38.38/acre which was rejected based on possible future Enhanced Oil Recovery (EOR) potential in the Allison Pennsylvanian formation. Since that time, depressed oil prices have made EOR projects unattractive. It is expected that these depressed oil prices will continue for the foreseeable future. Based on this rationale, the \$29.50/acre high bid offered in the December 14, 1982, sale looks attractive and we recommend that it be accepted for parcel 51.

This justification tracks with appellant's argument that the depressed state of the petroleum industry militated against simple recourse to comparative sale data, particularly at a time during which the economic situation facing the petroleum industry was undergoing dramatic alterations. We note, of course, that the Deputy Minerals Manager has asserted that due regard was given to the altered economic outlook facing the oil industry. While this may well be the case, this Board has nothing of record it which would establish it.

We recognize that, ultimately, appellant must not merely show that the Government's estimate did not constitute fair market value but must also affirmatively show that his bid did represent the fair market value, since absent this latter showing the Board could not order issuance of an oil and gas lease to appellant. See Viking Resources Corp., 80 IBLA 245 (1984). But, as we noted in Larry White, 81 IBLA 19 (1984), the burden of justifying his bid does not shift to the appellant "in the absence of sufficient documentation of the Government's estimate such as would establish its prima facie correctness." Id. at 22 n.2. Such a prima facie case cannot be made in the absence of a disclosure of what the presale evaluation was. Accordingly, we have no choice but to remand the case for readjudication of appellant's bid. If the bid is rejected again, BLM shall set forth the reasons for doing so, including the presale evaluation, so that they may be addressed by appellant and considered by the Board in the event of an appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case file is remanded for further action not inconsistent with this opinion.

James L. Burski  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Gail M. Frazier  
Administrative Judge

